

JUL 16 2019

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

U.S. DISTRICT COURT
W. DISTRICT OF N.C.

UNITED STATES OF AMERICA

vs.

ELLEN MADANS FROST

DOCKET NO. 1:19-CR- 64

BILL OF INDICTMENT

Violations:

18 U.S.C. § 371

18 U.S.C. § 666(a)(1)(A)

18 U.S.C. § 1341

18 U.S.C. § 2

THE GRAND JURY CHARGES:

I. INTRODUCTION

A. The Buncombe County Government

1. Buncombe County is a political subdivision of the State of North Carolina. At all times relevant to this Bill of Indictment, it has had a “county manager” form of government, under which the citizens of Buncombe County elect a Board of Commissioners (hereinafter “the Board”), and the Board appoints a County Manager, who serves as the county’s chief executive officer. During each of the continuous 12-month periods of every calendar year relevant to this Bill of Indictment, that is, 2014, 2015, 2016, and 2017, the Government of Buncombe County (hereinafter sometimes referred to as “Buncombe County” or “the County”) received benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, and other form of Federal assistance.

B. The County Board of Commissioners

2. Under North Carolina law, local governments derive all their powers from delegation by the State, and a county has only such rights and powers as the State grants to it. State law vests the exercise of all such powers, rights, duties, and functions of the county in the board of commissioners for that county.

3. At all times relevant to this Bill of Indictment, Buncombe County's Board of Commissioners comprised six members elected in three voting districts and a Chairman elected at large by the voters of the County.

4. Under State law, in order to take any valid action, including adopting or amending budget ordinances or making expenditures from the County's Economic Development Incentive Fund, the Commissioners must act in their corporate capacity in a public meeting duly held as prescribed by State law. A quorum must be present, consisting of a majority of Commissioners, and their votes must be public.

5. An individual Commissioner cannot contractually bind the County when she acts individually, informally, and separately from the Board. A Commissioner acting in her official capacity may make a valid and binding contract on behalf of the County only if so authorized by a formal action of the Board, following a public hearing and a public vote.

C. The Defendant: Commissioner Ellen Madans Frost

6. The Defendant ELLEN MADANS FROST (hereinafter "the Defendant" or "FROST") was first elected as a Buncombe County Commissioner in November 2012, and was sworn in on January 15, 2013. She was reelected in 2014, and continued to serve as a Commissioner until December 2018.

7. Both before and during the time relevant to this Bill of Indictment, FROST owned horses and had an avid interest in equestrian activities, competitions, and shows. During the period relevant to this Bill of Indictment, she stabled some of her horses at a horse farm in Polk County, which she visited frequently. She participated in showing her horses at various venues, including the Tryon International Equestrian Center.

D. The Co-conspirator: County Manager Wanda Skillington Greene

8. The county manager is the chief administrator of the county government, responsible to the board for the administration of all departments of County government under the board's general control. The county manager has the power to appoint, suspend, and remove all county officers, employees, and agents except for those elected by the citizens or whose appointment is otherwise provided for by law. The county manager directs and supervises the administration of all county offices, departments, boards, commissions, and agencies that are under the general control of the board, subject to the general direction and control of the board.

9. At all times relevant to this Bill of Indictment, Wanda Skillington Greene (hereinafter "Greene") was the County Manager of Buncombe County. She began her employment with the County in 1994 as an Assistant County Manager, and the Board appointed her as the County Manager in 1997. She remained the County Manager until her retirement from that position, effective June 30, 2017.

E. North Carolina's Open Meetings Law

10. North Carolina's Open Meetings Law requires that, with certain specified exceptions, all of the official meetings of a public body, including a county's board of commissioners, must be open to the public. The term "official meetings" includes all meetings, assemblies, or gatherings of a majority of the board for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business. The public body must keep full and accurate minutes of its official meetings, and those minutes shall be public records.

11. The public body generally must give at least seven days' advance public notice of its regular meetings, and at least 48 hours' advance public notice of specially-scheduled meetings. In the event of an emergency meeting, defined as one called because of generally unexpected circumstances that require immediate consideration, the public body must notify all local news media that have previously filed requests to receive such notices.

12. The nine specified exceptions to the Open Meetings law, allowing closed sessions, include such categories as preventing disclosure of privileged information, consulting with an attorney retained by that public body, considering personnel matters, and planning or hearing reports concerning investigations of criminal matters.

13. Of relevance here, one of the exceptions applies to the use of economic development incentive funds. The law allows a board of county commissioners to go into closed session to discuss matters involving the location or expansion of businesses, including agreement on a *tentative* list of economic development incentives that *may* be offered to the business in negotiations.

14. The Open Meetings Law, however, specifies:

Any action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, *must* be taken in an open session.

N.C.G.S. § 143-318.11(a)(4) (emphasis added).

F. *The Economic Development Incentive Program*

15. Beyond the general requirements of the Open Meetings Law, both the State and Buncombe County have additional statutes and policies applicable to the use of economic development incentive funds.

1. North Carolina State Law

16. State law grants counties and cities the authority to make appropriations for economic development purposes. For counties, the law requires that these appropriations may only be made when the board of commissioners officially determines that the use of such funds would “increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the county.” N.C.G.S. § 158-7.1(a).

17. The law formerly was silent as to what specific public notice, over and above the general requirements of the Open Meetings Law, was required to make economic development expenditures for the general purposes listed in subsection 158-7.1(a).

18. Effective October 20, 2015, the General Assembly amended § 158-7.1 to specify that the public notice and public hearing provisions applied to *any* expenditure of economic development incentive funds.

2. Buncombe County’s Notice and Hearing Requirements

19. Even before the State’s amendment of the notice requirements to specify that *all* such expenditures statewide required public notice and hearings, Buncombe County had long required that procedure for expenditures from its Economic Development Incentive Fund. The County first adopted the requirement of a public hearing by the Board of Commissioners in November 1993, and that requirement has remained in effect since that time.

3. The County Commissioners’ Knowledge of These Requirements

20. The Commissioners, including FROST, were very familiar with the State’s Open Meetings Law. They also knew of the State’s and the County’s public notice and public hearing requirements concerning the expenditure of the County’s Economic Development Incentive Funds.

21. Between the time of her election and her taking her seat as a Commissioner, FROST received training from the University of North Carolina’s

School of Government on November 29 and 30, 2012, concerning governance, leadership, and management, including the duties and powers of commissioners. On January 9 and 10, 2013, FROST and other Commissioners attended training from the School of Government on the essentials of county government, including ethics for elected officials and financial management in county government.

22. In addition, FROST and the other Commissioners had firsthand knowledge not just of the Open Meetings Law but also the Economic Development Incentive Fund's procedures and requirements, based on repeated instances of their going through the process while in office.

23. For instance, during FROST's very first meeting as a Commissioner, on January 15, 2013, the Board conducted a public hearing and a vote approving an Economic Development Incentive Fund payment. Between her joining the Board and the time of the first payment of County funds to one of the equine enterprises involved here, FROST participated in approximately 14 Board meetings involving possible expenditures from the County's Economic Development Incentive Fund. These meetings had been the subject of advanced public notice as required by law.

G. North Carolina's Statutory Prohibition of Gifts and Favors

24. It is a criminal offense under North Carolina law for any officer or employee of a governmental agency who is charged with awarding or administering public contracts willfully to receive or accept any gift or favor from any contractor, subcontractor, or supplier who has a contract with that governmental agency. N.C.G.S. § 133-23(a).

25. The term "governmental agency" includes political subdivisions of the State of North Carolina, such as Buncombe County. As part of their duties and powers, Buncombe County Commissioners have the responsibility to award public contracts, and regularly vote to approve or disapprove such contracts on behalf of the County.

H. Buncombe County's Prohibition of Gifts and Favors

26. At all times relevant to this Bill of Indictment, Buncombe County had in force a set of legally binding ordinances, duly enacted by the Board of Commissioners, regarding permissible and prohibited acts by its officials and employees. All Buncombe County employees—including the Commissioners—are obligated to adhere to the requirements contained in the Buncombe County Personnel Manual. Article V, Section 2 of that Manual mandates:

- A. No official or employee of the County shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise from any person, firm, or corporation that, in the employee's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the County.
- B. No official or employee shall accept any gift, favor, or thing of value that may tend to influence that employee in the discharge of duties.
- C. No official or employee shall grant any improper favor, service, or thing of value in the discharge of duties.

I. The Asheville Regional Airport

27. The Asheville Regional Airport (hereinafter sometimes referred to as "the Airport") is located in southern Buncombe County. Since 2012, it has been a state-sanctioned independent entity governed solely by the Greater Asheville Regional Airport Authority. That Airport Authority comprises seven board members: two each appointed by the Asheville City Council, the Buncombe County Board of Commissioners, and the Henderson County Board of Commissioners. The seventh member is an at-large appointment by the other six members.

28. Although the Buncombe County Board of Commissioners appoints two of the Airport Authority's members, at all times relevant to this Bill of Indictment, neither such member was himself or herself a County Commissioner. Thus, no County Commissioner was simultaneously a member of the Airport Authority board during this time period.

29. The Airport Authority is a fully self-sustaining enterprise receiving no local financial assistance for its operations, maintenance, or capital programs. At all times relevant to this Bill of Indictment, its Executive Director was a person identified herein as LB.

J. The Relevant Equestrian Enterprises

30. All of the entities described in this section received payments from the County's Economic Development Incentive Fund at various times during this scheme. They were and still are affiliated by overlapping ownership and operations, and will sometimes be referred to collectively hereinafter as "the equestrian enterprises."

31. Tryon Equestrian Properties, LLC, is a limited liability company registered in North Carolina in 2011. Its principal office is in Polk County, within the Western District of North Carolina. Its member and manager is an individual identified herein as MB. It owns and operates the Tryon International Equestrian Center.

32. The Tryon International Equestrian Center (hereinafter sometimes referred to as "the Tryon Center"), located in Polk County, North Carolina, is a facility hosting equestrian competitions and shows. It comprises a stadium, an indoor arena, multiple competition rings, spectator seating, stable facilities, on-site lodging, and restaurants. It opened in 2014. It is two counties, and approximately 36 miles, away from the Buncombe County limits.

33. Equestrian Sport Productions, LLC, is a limited liability corporation based in Wellington, Florida, and registered with the State of Florida. Its manager is MB, and it owns and operates the Palm Beach International Equestrian Center.

34. The Palm Beach International Equestrian Center, located in Wellington, Florida, is similar to the Tryon International Equestrian Center in its facilities and activities.

35. *The Chronicle of the Horse* is a weekly equestrian magazine that also has an internet publication site. Among other topics, it covers dressage, hunters

and jumpers, foxhunting, and steeplechase racing. It sells advertising for both its physical magazine and its website. MB acquired it in 2013. FROST had a subscription to the magazine by 2013, and that subscription terminated in September 2017.

II. THE SCHEME TO MISAPPLY \$575,530 OF BUNCOMBE COUNTY'S ECONOMIC DEVELOPMENT INCENTIVE FUNDS

A. *FROST's Initiating Buncombe County's Involvement with the Tryon International Equestrian Center*

36. In or about the first half of 2014, FROST began to speak with Greene about the Tryon Center, and FROST's desire that the County should be involved with it and should somehow help with the project.

37. FROST also began to communicate with MB about the Tryon Center and her interest in having the County participate in it. In mid-July of 2014, FROST helped arrange for a tour of the Center for herself, Greene, and the then-Chairman of the Board of Commissioners, conducted by MB and others associated with the Center. The owner of an Asheville corporate marketing firm also participated in this tour. This was an introductory informational tour of the Center, which was new and much of which was still under construction.

38. Following that tour, the owner of the marketing firm, at FROST's request, contacted an official at the Asheville Convention and Visitors Bureau to help arrange for MB and others associated with him to stay at the Omni Grove Park Inn in Asheville on July 19, 2014. They also arranged for a dinner for MB and his associates on July 19 at the Inn, to which several owners of local hospitality, housing, and development businesses would be invited.

39. Approximately 18 people attended that dinner. The only County officials present were FROST and Greene. In addition to the aforementioned business owners, the guests also included the husband and wife who operated the horse farm in Polk County where FROST stabled some of her horses.

40. Greene charged the costs of that dinner, \$1,726.73, to her personal credit card, and she paid \$17.00 for her own valet parking and another \$17.00 for FROST's. She submitted these expenses to the County for reimbursement, and she caused the County to reimburse her in full. The Convention and Visitors Bureau paid for the hotel rooms.

B. FROST's and Greene's Decision to Misapply the County's Economic Development Incentive Funds

41. FROST continued to discuss with MB and with Greene the possibility of the County's being involved with the Center. They also began communicating with a person identified herein as JW, who owned a consulting firm doing business on behalf of MB and his equestrian enterprises.

42. FROST and Greene began speaking with LB, the Executive Director of the Airport Authority, because they decided that the County funds would be spent to promote the Airport, even though the Airport Authority had its own promotional budget, and the County had not previously provided promotional funds on behalf of the Airport. LB expressed interest in participating, because from the Airport's perspective this would be free advertising.

43. FROST learned that the potential sponsorship agreement would cost the County approximately \$250,000. When FROST asked Greene where in the County's budget they could get the funds to pay for this, Greene told her she would take the money from the Economic Development Incentive Fund.

44. On December 15, 2014, FROST spoke with JW to set up a meeting with him to discuss the Tryon Center and *The Chronicle of the Horse*. In an email later that day to FROST, JW proposed several dates in December when he could fly to Asheville for such a meeting. FROST immediately forwarded that email to Greene and the two of them agreed to propose December 29 for the meeting date.

45. The next day, Greene invited LB, the Executive Director at the Asheville Airport, to meet with her, FROST, and Tryon Equestrian Partners at the Airport on December 29. LB confirmed his availability, and Greene forwarded that exchange to FROST. FROST and Greene also discussed who else, if anyone, they would invite to that meeting.

46. JW sent an email to FROST on December 17, 2014, informing her that MB was trying to arrange his schedule so that he, too, could attend the meeting. FROST forwarded that message to Greene.

47. As planned, on December 29, JW and MB met at the Airport's conference room with FROST, Greene, and LB. They discussed the County's paying for a sponsorship for two seasons at the Tryon Center on behalf of the Airport, as well as paying for sponsoring a "Grand Prix" event at the Palm Beach International Equestrian Center in Wellington, also on behalf of the Airport. MB and JW described the types of advertising, promotions, and other benefits to be provided to the Airport if the County entered into such contracts.

C. The County-funded Dinner at the Grand Bohemian Hotel

48. Following the meeting at the Airport, FROST and Greene decided to organize a dinner the following month at which JW or MB could make a presentation about the Tryon Center to Asheville area executives in the hospitality, banking, and development businesses, among others. On December 30, Greene contacted several local restaurants to arrange such an event, finally choosing the Grand Bohemian Hotel in Asheville. That event was set for January 19, 2015.

49. JW emailed Greene on December 31, 2014, to tell her he would be forwarding more information about the Tryon Center and the Wellington Winter Equestrian Festival, and that he would check with MB about hotels for the end of January in Wellington. Greene forwarded this email to FROST later that day.

50. Over the first week of January 2015, FROST and Greene exchanged a series of emails with one another discussing the wording of the invitation that they were going to send out to the Grand Bohemian Hotel event, and also deciding whom they would invite.

51. On January 11, 2015, Greene sent an email to approximately fifteen recipients captioned "Invitation from Ellen Frost and [MB] to learn more about Tryon International Equestrian Center." The invitees included Assistant County Manager Jon Creighton, LB of the Airport Authority, several bankers, brewery owners, a realtor, and persons in the hospitality and land development business.

52. FROST and Greene did not invite any of the other members of the Board of Commissioners, nor did they inform any of those other members of this event.

53. At the dinner, FROST made a brief welcoming address to the attendees, and the guests were provided with an open bar, a dinner of grouper, strip steak, or seared duck, and dessert. FROST introduced MB for a presentation about the Tryon Center.

54. Greene charged the costs of this event, \$4,151.21, to her personal credit card and then submitted the expense to the County for reimbursement, claiming that \$3,880.95 of it was attributable to "Miscellaneous Travel Expense." She then authorized her reimbursement by the County.

D. The County's Contract with Equestrian Sport Productions

55. Two days after the Grand Bohemian Hotel event, on January 21, 2015, JW sent an email to Greene, stating that he wanted to set up a conference call for the next day to introduce her to the "sponsorship team" in Wellington and to "discuss next weeks [sic] event." Greene forwarded the email to FROST, asking if FROST could handle it instead, and telling FROST: "That way it gets done your way and you know when to be where." FROST sent an email to JW informing him that it was she who would be on the call.

56. On January 22, 2015, shortly before that conference call, JW sent an email to FROST and to Greene, stating:

Hi Wanda and Ellen

Please find attached the draft contract and exhibit for the Winter Equestrian Festival. I should have the Chronicle of the Horse and Tryon International Equestrian Center contracts to you shortly. It may be helpful to discuss the deliverables for Tryon when we are in Wellington next week. We plan to discuss the deliverables for WEF when we meet this afternoon with Ellen.

57. JW enclosed the sponsorship agreement contract, dated January 7, 2015, and an accompanying "Exhibit A" between the County and Equestrian Sport Productions for two years of sponsorship of the Winter Equestrian Festival ("WEF"), to be conducted at the Palm Beach International Equestrian Center in Wellington, Florida. The 2015 WEF would run from January 7 through March 29, 2015, and the 2016 WEF would run from January 6 through March 29, 2016.

58. Exhibit A specified that the County was obligated to pay \$50,000 for the 2015 WEF sponsorship, due upon signing. The County was also obligated to pay another \$100,000, due by December 1, 2015, for the 2016 WEF sponsorship. Greene signed the contract and Exhibit A on behalf of the County on January 26, 2015, and returned them to Equestrian Sport Productions.

59. One of the sponsorship benefits described in Exhibit A was the use of a VIP hospitality table in a members-only dining club known as the International Club. That club offered complimentary breakfast, lunch and dinners during specific evening competitions. Under the contract, the County had access to this VIP table on January 29 through February 1, 2015, and January 27 through January 31, 2016.

60. FROST and Greene received an email on February 17, 2015, from Equestrian Sport Productions' sponsorship manager sending them fully executed copies of the contract and Exhibit A. The president of Equestrian Sport Productions had signed the contract, and MB had signed Exhibit A.

61. Although the County was the contracting party and the financial sponsor pursuant to this contract, the contract specified that the public advertisements and sponsorship title rights would be in the name of the Asheville Regional Airport.

62. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning this contract, and neither FROST nor Greene informed the other members of the Board of Commissioners about its existence.

E. The County-funded Trip to Wellington, Florida

63. Even before the Grand Bohemian Hotel event or the creation of any contracts with the equestrian enterprises, FROST and Greene were already planning a trip to Wellington, to be paid for by the County, to attend the WEF during the sponsorship period.

64. On December 30, Greene made reservations for two roundtrip tickets for FROST and herself between Asheville and the West Palm Beach airport for the weekend of January 30 through February 1, 2015. She forwarded the reservation information via email later that day to FROST, who replied, "Great!!!!"

65. On January 22, 2015, the sponsorship manager for Equestrian Sport Productions sent an email to FROST and Greene enclosing "the memo regarding next weekend's activities." Attached was a memorandum addressed to FROST and Greene on the subject "Wellington Eventing Showcase presented by Asheville Regional Airport." It set out the schedule of events from January 28 through 31, described "the VIP Hospitality Facility" to which they would have access, informed them of how to get their "VIP Parking Passes," and invited them to several social functions.

66. On January 30, 2015, FROST and Greene flew to West Palm Beach and attended the WEF at the Palm Beach International Equestrian Center. Greene expensed to the County the costs of this trip for FROST and herself, totaling \$2,497.36.

F. The \$50,000 Payment to Equestrian Sport Productions

67. On February 12, 2015, the County received its first invoice from Equestrian Sport Productions for \$50,000 for the "2015 WEF Sponsorship Fee." Greene authorized payment of this invoice. As she had earlier told FROST she would do, Greene directed that the payment come from the County's Economic Development Incentive Fund. On February 19, 2015, Greene and the County Finance Director executed a check for \$50,000 and caused it to be delivered by mail to Equestrian Sport Productions.

68. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning this payment, and neither FROST nor Greene informed the other members of the Board of Commissioners about its existence.

G. The County's Contract with Tryon Equestrian Properties

69. On June 2, 2015, Greene signed a contract and an accompanying Exhibit A on behalf of the County with Tryon Equestrian Properties committing the County to become a sponsor at the Tryon International Equestrian Center for the 2015 and the 2016 Tryon Horse Show Series. The sponsorship season ran from April 1 through November 15 of each year. The fee would be \$125,000 for 2015 and \$150,000 for 2016. As with the earlier Wellington contract, FROST also knew of this sponsorship contract and its Exhibit A.

70. The sponsorship benefits specified in the contract and Exhibit A included the sponsor's being promoted as an "Official and Major Sponsor of the Tryon International Equestrian Center" during the two seasons, as well as sponsorship of a Grand Prix event, of a junior and an amateur jumper division, a branded logo jump, on-site signage, and a full-page advertisement in the visitor guide.

71. Although the contract and Exhibit A repeatedly identified the County as the sponsor, even providing the names of sponsored events such as the "Buncombe County FEI CSI4 Grand Prix," the contracting parties understood and agreed that the name and logo on all sponsored events, signage, and advertisements would be the Asheville Regional Airport. No signage, sponsorships, or advertisements would be in the name of Buncombe County.

72. There was no public notice, nor any vote by the Board of Commissioners, concerning this contract, nor did FROST or Greene inform the other members of the Board of Commissioners about this contract.

H. The Legends Club VIP Table

73. Beyond advertising and publicity, another sponsorship benefit of the Tryon Center contract included "one (1) premium location VIP pavilion table reserved for corporate hospitality and networking. This 'Members Only' VIP club

is open during event operating hours and offers complimentary dining and beverages.” It also included a “VIP parking pass for access into premium parking lot areas.”

74. In contrast to the earlier contract involving the sponsorship in Florida, which only provided for a single five-day period of VIP table access for each year of the sponsorship, the Tryon Center contract provided for access to the VIP table for the entirety of each season, spanning April 1 through November 15.

75. The “Members Only” club at the Tryon Center was named the Legends Club. As the Tryon Center’s promotional material stated, it included “a full spread buffet, and a premium selection of liquor, beer, and wine.” Some tables were also available to non-sponsors for a one-week term for approximately \$2,000 a week.

76. Although the Tryon Center would typically include the use of the Legends Club VIP table as part of sponsorship agreements of the monetary amount that the County had entered into, it was not a mandatory provision. A sponsor could enter into an identical sponsorship agreement without the VIP table provision for a reduced fee. That did not happen here.

77. Access to the VIP table was limited to those persons approved by the sponsor and placed on an admissions list. Over the two-year term of the contract, the person who ordinarily served as the contact person who approved the use of the Buncombe County table was FROST. For example, even though it was officially identified by the Legends Club as the Asheville Regional Airport table, when officials from the Airport, including its executive director or members of the Airport’s board, wanted to use the table, they would ordinarily contact FROST to obtain permission and to get their names on the guest list.

78. During the 2015 and 2016 seasons at Tryon, FROST repeatedly made use of the VIP table and invited friends and others to the table, including the owners of the horse farm in Polk County where she stabled her horses. FROST did not tell her fellow Commissioners of the existence of this table, nor of her use of it.

I. The \$125,000 Payment to Tryon Equestrian Properties

79. On June 8, 2015, the County received its first invoice from the Tryon International Equestrian Center for the "2015 Tryon Sponsorship." Greene authorized its payment from the Economic Development Incentive Fund. On June 11, 2015, she and the County Finance Director signed a check for \$125,000, made out to Tryon Equestrian Properties, and caused that check to be delivered by mail.

80. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning this payment, and neither FROST nor Greene informed the other members of the Board of Commissioners about its existence.

81. With regard to that payment, a County employee was processing the purchase order when she became concerned that such a large sum of County money was being paid to an out-of-county business, so she asked Greene if this was correct. Greene assured her that it was and directed her to process it. Within a few days, Greene eliminated that person's employment position and had her transferred to a position of assistant librarian at a branch library, at a salary reduction of approximately \$16,000 per year.

J. The \$896.70 and \$530 Payments to Tryon Equestrian Properties

82. On June 30, 2015, the County received an invoice from the Tryon Center for \$896.70 for six "Logo Banners." Greene approved payment of this invoice from the County Manager Miscellaneous Operating Fund, and she and the Finance Director executed a check to Tryon Equestrian Properties on July 9, 2015, and caused it to be mailed.

83. The County received another small invoice, this one for \$530.00, from the Tryon Center on July 13, 2015, for shipping an "Asheville Regional Airport Jump" from Wellington to Tryon. Greene authorized its payment from the Economic Development Incentive Fund, and the county mailed a check on July 16, 2015.

84. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning either of these payments, and neither FROST nor Greene informed the other members of the Board of Commissioners about them.

K. The County-funded Trip to Saratoga Springs, New York

85. In 2015, FROST, Greene, and the Airport's Executive Director discussed with MB and others the possibility of establishing an equine quarantine facility near the Airport, which could be used when horses were brought into the United States from a foreign country. One such facility already in operation was located near Newburgh, New York.

86. On July 19, 2015, Greene purchased airline tickets for herself and FROST, totaling \$2,072.40, for a flight from Asheville to Albany, New York, leaving on July 29 and returning on August 2, 2015. They stayed one night at a hotel in Albany and three nights at a hotel in Saratoga Springs, New York. While there, they visited a large private horse farm where a horse once owned by FROST was stabled, they shopped, and they attended horse races. They did not tour the quarantine facility in Newburgh.

87. The total cost of this trip for the two of them was \$6,344.20, including flights, lodging, meals, car rental, parking, and incidental expenses. Greene submitted these charges on her expense report and received complete reimbursement from the County.

88. Shortly before FROST and Greene traveled to Saratoga Springs, Greene also used her credit card to purchase airline tickets for herself and FROST, totaling \$1,371.00, for a flight to Stewart International Airport, which is near Newburgh. That trip was scheduled for August 6, 2015, returning the next day. Greene submitted that expense to the County and was reimbursed by the County, but she and FROST later canceled that trip.

L. The \$100,000 Payment to Equestrian Sports Productions

89. On September 22, 2015, the County received another invoice from Equestrian Sport Productions in Wellington, this time for \$100,000. This invoice was for "2016 WEF Sponsorship Fee." Greene authorized payment of this invoice, again directing that the payment would come from the County's Economic Development Incentive Fund. On September 24, 2015, she and the County's

Finance Director signed a check for \$100,000 and caused that check to be delivered by mail to Equestrian Sport Productions.

90. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning this payment, and neither FROST nor Greene informed the other members of the Board of Commissioners about its existence.

M. The \$150,000 Payment to The Chronicle of the Horse

91. On January 4, 2016, Greene received an email with an invoice from *The Chronicle of the Horse* for \$150,000 for a combination of full-page advertisements and two-page spreads in the physical magazine, from December 2015 through December 2016, and banner advertisements on the magazine's website for January through November 2016, all for the benefit of the Asheville Regional Airport.

92. Greene forwarded the email to another County employee for processing, with instructions to pay the invoice from the Economic Development Incentive Fund. On January 14, 2016, Greene and the County Finance Director signed the check for \$150,000 and caused it to be mailed to *The Chronicle of the Horse*.

93. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning this payment, and neither FROST nor Greene informed the other members of the Board of Commissioners about its existence.

N. The \$689.00 Payment to Equestrian Sport Productions

94. The County received an invoice from Equestrian Sport Productions dated January 20, 2016, but not received until March 28, 2016. The invoice was for \$689.00 for two "2016 WEF Banners." Greene approved the payment of this invoice out of the County Manager Dues & Subscriptions account, and the County mailed the check for \$689.00 on March 31, 2016.

95. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning this payment, and neither FROST nor Greene informed the other members of the Board of Commissioners about its existence.

O. The \$150,000 Payment to Tryon Equestrian Properties

96. The County received a \$150,000 invoice from Tryon Equestrian Properties, dated August 6, 2016, for the 2016 Tryon Sponsorship. Greene authorized its payment from the Economic Development Incentive Fund, and on August 11, 2016, she and the County Finance Director executed the check for \$150,000 to Tryon Equestrian Properties and caused it to be delivered by mail.

97. There was no public notice, nor any hearing or vote by the Board of Commissioners, concerning this payment, and neither FROST nor Greene informed the other members of the Board of Commissioners about its existence.

P. The Other Commissioners Learn of Some of the Payments to the Tryon Center

98. Between January 7, 2014—one week after FROST and Greene had made their plans to travel to Wellington at County expense, and one week before the dinner at the Grand Bohemian Hotel—and December 2014, the Board of Commissioners met approximately twenty times. In 2015, the Board of Commissioners met approximately sixteen times, and from January through August of 2016 they met approximately ten times. During this entire period, neither FROST nor Greene informed the other Commissioners of any County contracts with, or payments to, Tryon Equestrian Properties, Equestrian Sport Productions, or *The Chronicle of the Horse*.

99. The other Commissioners learned about the existence of these County payments, to a very limited extent, on August 30, 2016. That was when an Asheville newspaper published a column answering a letter that asked why the Asheville Regional Airport would be “sponsoring race prizes for rich people at a horse complex in Florida.” The letter included a photograph, which the newspaper also published, of a large display check for \$22,500 made out to the winner of the “Asheville Regional Airport Wellington Eventing Showcase” at the Palm Beach International Equestrian Center.

100. A spokesperson for the Asheville Regional Airport referred the newspaper’s columnist to Greene for an explanation. As reported in the

newspaper that day, Greene said that the County had paid for this promotional spending as part of its support for the Airport. She said that the payment had gone to the Tryon Center, which, she claimed, did the advertising and promotions at the Winter Equestrian Festival, and had been done to draw people to the Asheville Airport.

101. Greene also sent the columnist photographs of three invoices to show, supposedly, that the County had paid a total of \$26,426.70. Among these were the invoices for \$530 and for \$896.70. The third was a photograph of the June 5, 2016, invoice from the Tryon Center for \$125,000, but the version she sent, which was published in the newspaper, had been forged to reduce the apparent amount from \$125,000 to \$25,000.

102. After the other members of the Board of Commissioners learned from that newspaper column about these three payments, several of them discussed it among themselves and asked follow-up questions of Greene, who maintained that those expenditures were the entirety of the County's payments to the Tryon Center.

103. FROST, however, knew this was false, yet she did not tell the other Commissioners that she already knew of contracts with, and payments to, the equestrian enterprises; or of the County's paying to sponsor events both at Wellington and at Tryon on behalf of the Airport; or of the County-funded trips she and Greene had taken to Wellington and to Saratoga Springs; or of the existence of the sponsor's table at the Legends Club and her use of that benefit.

104. The County-funded sponsorship at the Tryon Center, including the availability of the VIP table, continued through the end of the Tryon Horse Show Series season on November 15, 2016.

Q. The Other Commissioners Learn of the Full Scope of the Misapplication of the County's Economic Development Incentive Fund

105. Within two months of Greene's June 30, 2017, retirement, County employees examining many of the County's expenditures over the past several years discovered, among other items, all of the County's payments to the equestrian enterprises. The employees informed the Board of Commissioners of

this discovery. It was only then that the other members of the Board of Commissioners finally learned of the number and amounts of these payments.

106. In November 2017, as a result of documents obtained from the County through a public records request, the Asheville newspaper published a story describing these payments.

107. As quoted in a follow-up newspaper article published on November 21, 2017, FROST continued to conceal the extent of her knowledge and actions. She said that she had made the introductions between Greene and the people of the Tryon Center, "and then [Greene] took it to a level I never dreamed would be possible. I was surprised as everyone at the amount. Very surprised." FROST also stated, "But was that a good expense? Absolutely not."

COUNT ONE

(Conspiracy to Commit Federal Program Fraud, in violation of 18 U.S.C. § 371)

108. Paragraphs 1 through 107 are re-alleged and incorporated herein by reference.

109. Beginning by in or about July 2014, and continuing thereafter through in or about November 2017, in Buncombe County and Polk County, within the Western District of North Carolina, and elsewhere, the defendant,

ELLEN MADANS FROST,

and Wanda Skillington Greene knowingly and willfully conspired and agreed together and with each other, and with other persons both known and unknown to the Grand Jury, to commit an offense against the United States, that is:

being agents of a local government, that is, the Government of Buncombe County, did, without authority, knowingly convert to the use of a person not the rightful owner, and otherwise did intentionally misapply property with a value of at least \$5,000 that was owned by and under the control of such local government, in violation of Title 18, United States Code, Section 666(a)(1)(A).

MANNER AND MEANS OF THE CONSPIRACY

110. It was a part of the conspiracy that FROST, Greene, and others, without authority, did intentionally cause the misapplication of Buncombe County's property, that is, more than \$575,000, to Equestrian Sport Productions, Tryon Equestrian Properties, and *The Chronicle of the Horse*, for the benefit of a third party, that is, the Asheville Regional Airport.

111. It was further a part of the conspiracy that FROST, Greene, and others, without authority, did intentionally cause the misapplication of Buncombe County's property, that is, more than \$575,000, for the benefit of a third party, that is, FROST, for the purposes of her use and enjoyment of the VIP tables at the Tryon Center and at the Palm Beach International Equestrian Center.

112. It was further a part of the conspiracy that FROST and Greene, without authority, thereby also knowingly converted Buncombe County's property, that is, more than \$575,000, to the use of persons not the rightful owners.

113. It was further a part of the conspiracy that FROST and Greene, believing that the Board of Commissioners would not approve the expenditure of the County's Economic Development Incentive Fund, knowingly and intentionally failed to inform the Board of Commissioners of their scheme and failed to obtain lawful approval of such payments.

114. It was further a part of the conspiracy that FROST and Greene knowingly and willfully acted to maintain the secrecy of their actions and of these payments.

OVERT ACTS

115. In furtherance of this conspiracy, FROST, Greene, and others known and unknown to the Grand Jury committed, and caused to be committed, the overt acts set forth in Paragraphs 36 through 107 of this Bill of Indictment, among others.

116. All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH SIX

**(Federal Program Fraud, and Aiding and Abetting the Same,
in violation of 18 U.S.C. § 666(a)(1)(A) and § 2)**

117. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

118. On or about the dates set forth below, in Buncombe County and Polk County, in the Western District of North Carolina, and elsewhere, the defendant,

ELLEN MADANS FROST,

and Wanda Skillington Greene, being agents of a local government, that is, the Government of Buncombe County, did, without authority, knowingly convert to the use of any person other than the rightful owner, and did intentionally misapply property with a value of at least \$5,000 that was owned by and under the control of such local government, and did aid and abet others in the commission of such offenses, as set forth more specifically in Paragraphs 67, 79, 89, 92, and 96, respectively:

| COUNT | DATE | VALUE OF PROPERTY |
|-------|--------------------|-------------------|
| TWO | February 19, 2015 | \$50,000 |
| THREE | June 11, 2015 | \$125,000 |
| FOUR | September 24, 2015 | \$100,000 |
| FIVE | January 14, 2016 | \$150,000 |
| SIX | August 11, 2016 | \$150,000 |

119. All in violation of Title 18, United States Code, Sections 666(a)(1)(A) and 2.

COUNTS SEVEN THROUGH ELEVEN

**(Mail Fraud, and Aiding and Abetting the Same,
in violation of 18 U.S.C. §§ 1341 and 2)**

120. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

The Scheme

121. Beginning by in or about July 2014, and continuing thereafter until on or about August 11, 2016, in Buncombe County, and Polk County, within the Western District of North Carolina, and elsewhere, the defendant,

ELLEN MADANS FROST,

and Wanda Skillington Greene, and others known and unknown to the Grand Jury, devised and intended to devise a scheme and artifice to defraud and deprive Buncombe County of money and property by materially false and fraudulent pretenses, representations, and promises, as set forth in Paragraphs 36 through 98, and did aid and abet one another in the commission of that scheme and artifice.

Purposes of the Scheme and Artifice

122. The purposes of the scheme and artifice were surreptitiously to cause Buncombe County to make payments of more than \$575,000 of Economic Development Incentive Funds to Equestrian Sport Productions, Tryon Equestrian Properties, and *The Chronicle of the Horse* and to do so without lawful authority, and then to maintain the secrecy of those payments and to withhold knowledge of them from the Board and the public.

Manner and Means

123. The manner and means that FROST and Greene used to carry out this scheme and artifice are set out in Paragraphs 36 through 107.

Execution of the Scheme

124. On or about each of the dates set forth below, in Buncombe County, within the Western District of North Carolina, and elsewhere, the defendant,

ELLEN MADANS FROST,

and Wanda Skillington Greene, for the purpose of executing the above-described scheme and artifice to defraud, and for obtaining money or property by means of false and fraudulent pretenses, representations, and promises, knowingly caused to be delivered by mail according to the direction thereon the following matters, and aided and abetted one another in so causing:

| COUNT | DATE | CHECK AMOUNT | RECIPIENT |
|--------|--------------------|-----------------|---------------------------------|
| SEVEN | February 19, 2015 | \$50,000 | Equestrian Sport Productions |
| EIGHT | June 11, 2015 | \$125,000 | Tryon Equestrian Properties |
| NINE | September 24, 2015 | \$100,000 | Equestrian Sport Productions |
| TEN | January 14, 2016 | \$150,000 | Chronicle of the Horse |
| ELEVEN | August 11, 2016 | \$150,000 | Tryon Equestrian Properties |

125. All in violation of Title 18, United States Code, Sections 1341 and 2.

NOTICE OF FORFEITURE

126. Notice is hereby given of 18 U.S.C. § 982 and 28 U.S.C. § 2461(c). Under Section 2461(c), criminal forfeiture is applicable to any offenses for which forfeiture is authorized by any other statute, including but not limited to 18 U.S.C. § 981 and all specified unlawful activities listed or referenced in 18 U.S.C. § 1956(c)(7), which are incorporated as to proceeds by Section 981(a)(1)(C). The

following property is subject to forfeiture in accordance with Section 982 and/or 2461(c):

- a. All property which constitutes or is derived from proceeds of the violations set forth in this Bill of Indictment; and
- b. If, as set forth in 21 U.S.C. § 853(p), any property described in (a) cannot be located upon the exercise of due diligence, has been transferred or sold to, or deposited with, a third party, has been placed beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty, all other property of the defendant/s to the extent of the value of the property described in (a).

A TRUE BILL

FOREMAN

R. ANDREW MURRAY
UNITED STATES ATTORNEY


RICHARD LEE EDWARDS
ASSISTANT UNITED STATES ATTORNEY